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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues
13 Against:

14 **WILLIAM FERNANDO MATIAS**
15 10329 S. Inglewood Avenue, APT 4
16 Inglewood, CA 90304

17 **Applicant for a Pharmacy Technician**
18 **License**

19 Respondent.

Case No. 4123

OAH No. 2012061111

DEFAULT DECISION AND ORDER

[Gov. Code, § 11520]

20 **FINDINGS OF FACT**

21 1. On or about March 19, 2012, Complainant Virginia K. Herold, in her official capacity
22 as the Executive Officer of the Board of Pharmacy, filed Statement of Issues No. 4123 against
23 William Fernando Matias (Respondent) before the Board of Pharmacy.

24 2. On or about October 5, 2009, Respondent filed an application dated August 25, 2009,
25 with the Board of Pharmacy to obtain a Pharmacy Technician License.

26 3. On or about April 28, 2011, the Board issued a letter denying Respondent's
27 application for a Pharmacy Technician License. On or about June 20, 2011, Respondent appealed
28 the Board's denial of his application and requested a hearing.

1 4. On or about April 3, 2012, Teresa Sutton, an employee of the Department of Justice,
2 served by Certified and First Class Mail a copy of the Statement of Issues No. 4123, Statement to
3 Respondent, Request for Discovery, Government Code sections 11507.5, 11507.6, and 11507.7,
4 and Notice from Respondent/Applicant to Respondent's address on the application form, which
5 was and is 10329 S. Inglewood Avenue, Apt 4, Inglewood, CA 90304.

6 A copy of the Statement of Issues is attached as **Exhibit A**, and is incorporated herein by
7 reference.

8 5. Service of the Statement of Issues was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c)

10 6. A Notice of Hearing was served by mail at Respondent's address on the application
11 and it informed him that an administrative hearing in this matter was scheduled for October 10,
12 2012. Respondent failed to appear at that hearing.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the
15 hearing, the agency may take action based upon the respondent's express admissions
16 or upon other evidence and affidavits may be used as evidence without any notice to
17 respondent; and where the burden of proof is on the respondent to establish that the
18 respondent is entitled to the agency action sought, the agency may act without taking
19 evidence.

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on
22 evidence on file herein, finds that the allegations, in Statement of Issues No. 4123 are true.

23 **DETERMINATION OF ISSUES**

24 1. Based on the foregoing findings of fact, Respondent William Fernando Matias has
25 subjected his application for a Pharmacy Technician License to denial.

26 2. Service of Statement of Issues No. 4123 and related documents was proper and in
27 accordance with the law.

28 3. The agency has jurisdiction to adjudicate this case by default.

 4. The Board of Pharmacy is authorized to deny Respondent's application for licensure
based upon the following violations alleged in the Statement of Issues:

1 a. Bus. & Prof. Code, §§ 475 and 480, subdivision (a)(1) (substantially-related
2 criminal convictions) and

3 b. Bus. & Prof. Code, §§ 480(c) (knowingly making a false statement of fact on
4 application: failure to disclose convictions).

5 **ORDER**

6 IT IS SO ORDERED that the application of Respondent William Fernando Matias is
7 hereby denied.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on December 28, 2012.

13 It is so ORDERED ON November 28, 2012

14 BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS
16 STATE OF CALIFORNIA

17
18 By


19 STANLEY C. WEISSER
20 Board President

21
22 LA2011601141
23 51175323.DOC

24 Attachment:

25 Exhibit A: Statement of Issues No. 4123
26
27
28

Exhibit A

Statement of Issues No. 4123

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2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 NANCY A. KAISER
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
Against:

Case No. 4123

12 **WILLIAM FERNANDO MATIAS**
13 10329 S. Inglewood Avenue
14 Inglewood, CA 90304

STATEMENT OF ISSUES

15 **Applicant For a Pharmacy Technician**
Registration

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On or about October 5, 2009, the Board of Pharmacy, Department of Consumer
23 Affairs (Board) received an application for a Pharmacy Technician Registration from William
24 Fernando Matias (Respondent). On or about August 25, 2009, William Fernando Matias certified
25 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on April 28, 2011.

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28 ///

JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code, unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 475 states:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

"(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

"(2) Conviction of a crime.

"(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

"(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license."

6. Section 480 states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

1 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
2 benefit himself or herself or another, or substantially injure another.

3 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
4 would be grounds for suspension or revocation of license.

5 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
6 substantially related to the qualifications, functions, or duties of the business or profession for
7 which application is made.

8 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
9 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
10 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
11 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
12 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
13 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
14 Section 482.

15 "(c) A board may deny a license regulated by this code on the ground that the applicant
16 knowingly made a false statement of fact required to be revealed in the application for the
17 license."

18 7. Section 4301 states, in part:

19 "The board shall take action against any holder of a license who is guilty of unprofessional
20 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
21 Unprofessional conduct shall include, but is not limited to, any of the following:

22 ...

23 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
24 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
25 whether the act is a felony or misdemeanor or not.

26 "(g) Knowingly making or signing any certificate or other document that falsely represents
27 the existence or nonexistence of a state of facts.

1 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
2 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
3 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
4 to the extent that the use impairs the ability of the person to conduct with safety to the public the
5 practice authorized by the license.

6 ...

7 “(k) The conviction of more than one misdemeanor or any felony involving the use,
8 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
9 combination of those substances.

10 “(l) The conviction of a crime substantially related to the qualifications, functions, and
11 duties of a licensee under this chapter [the Pharmacy Law]. The record of conviction of a
12 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
13 regulating controlled substances or of a violation of the statutes of this state regulating controlled
14 substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all
15 other cases, the record of conviction shall be conclusive evidence only of the fact that the
16 conviction occurred. The board may inquire into the circumstances surrounding the commission
17 of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving
18 controlled substances or dangerous drugs, to determine if the conviction is of an offense
19 substantially related to the qualifications, functions, and duties of a licensee under this chapter. A
20 plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a
21 conviction within the meaning of this provision. The board may take action when the time for
22 appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order
23 granting probation is made suspending the imposition of sentence, irrespective of a subsequent
24 order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
25 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
26 accusation, information, or indictment.”

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28 ///

1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 1770, states:

3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare."

9 **FIRST CAUSE FOR DENIAL OF APPLICATION**

10 **(Criminal Convictions)**

11 9. Respondent's application is subject to denial under sections 475 and 480, subdivision
12 (a)(1), in conjunction with California Code of Regulations, title 16, section 1770, in that
13 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
14 of a pharmacy technician applicant, as follows:

15 a. On about March 12, 2007, after pleading nolo contendere, Respondent was convicted
16 of one misdemeanor count of violating local ordinance MC 4.48.30 [no alcoholic beverage
17 consumption permitted], in the criminal proceeding entitled *The People of the State of California*
18 *vs. William Fernando Matias* (Super. Ct. Los Angeles County, 2007, No. 7SY00117). The Court
19 placed Respondent on 1 year probation (until March 12, 2008) with certain terms and conditions,
20 perform 26 hours of community service and to pay fines. The circumstances surrounding the
21 conviction are that on or about December 21, 2006, officers of the Manhattan Beach Police
22 Department cited Respondent for consuming an alcoholic beverage in public.

23 b. On or about March 13, 2007, after pleading nolo contendere, Respondent was
24 convicted of one misdemeanor count of violating Penal Code section 415(2) [disturbing the
25 peace], in the criminal proceeding entitled *The People of the State of California vs. William*
26 *Fernando Matias* (Super. Ct. Los Angeles County, 2007, No. 7IG00887). The Court placed
27 Respondent on probation for a period of 1 year (until March 13, 2008) with certain terms and
28 conditions, pay fines in lieu of 5 days in custody and to perform 3 days of graffiti removal. The

1 circumstances surrounding the conviction are that on or about January 24, 2007, officers of the
2 Los Angeles Sheriff's Department arrested Respondent for disturbing the peace.

3 c. On or about December 23, 2005, after pleading nolo contendere, Respondent was
4 convicted of one misdemeanor count of violating Penal Code section 601(k) [trespassing], in the
5 criminal proceeding entitled *The People of the State of California vs. William F. Matias* (Super.
6 Ct. Los Angeles County, 2005, No. 5WL03054). The Court placed Respondent on 18 months
7 probation (until June 23, 2007) with certain terms and conditions and to perform 3 days of Cal
8 Trans in lieu of a fine. The circumstances surrounding the conviction are that on or about
9 September 21, 2005, Respondent was observed stealing alcoholic beverages from Ralph's
10 Supermarket.

11 d. On or about August 12, 2004, after pleading nolo contendere, Respondent was
12 convicted of one misdemeanor count of violating Vehicle Code section 23152(a) [driving under
13 the influence of alcohol or drugs], in the criminal proceeding entitled *The People of the State of*
14 *California vs. William Fernando Matias* (Super. Ct. Los Angeles County, 2004, No. 4WL02557).
15 The Court placed Respondent on probation for a period of 36 months with certain terms and
16 conditions and ordered Respondent to complete a 6-month First Offender Alcohol Counseling
17 Program (AB762) and serve 13 days in custody in lieu of fines. The circumstances surrounding
18 the conviction are that on or about June 5, 2004, officers of the Los Angeles Police Department
19 arrested Respondent for driving a motor vehicle while under the influence of alcohol or drugs.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 **(Knowingly Making a False Statement of Fact)**

22 10. Respondent's application is subject to denial under section 480, subdivision (c), in
23 conjunction with section 475 (a)(1), in that on or about August 25, 2009, Respondent knowingly
24 made a false statement of fact required to be revealed in his Application for Registration as a
25 Pharmacy Technician, in that he failed to disclose that on March 13, 2007, March 12, 2007,
26 December 23, 2005 and August 12, 2004, he was convicted of criminal offenses. Complainant
27 refers to, and by this reference incorporates, the allegations set forth in paragraph 9, subparagraph
28 (a) through (d), as though set forth fully herein.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Acts Warranting Denial of Licensure)**

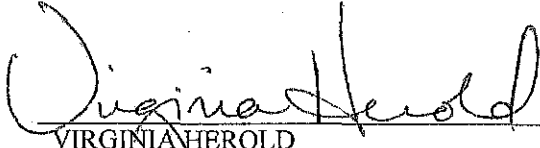
3 11. Respondent's application is subject to denial under section 480, subdivision (a)(3), in
4 conjunction with section 4301, subdivisions (f), (g), (h), (k), and (l), in that Respondent
5 committed acts that if done by a licensee would be grounds for suspension or revocation of
6 license. Specifically, Respondent engaged in dishonest conduct and alcohol abuse and was
7 convicted of substantially related crimes, including convictions related to alcohol consumption.
8 Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 9
9 and 10, as though set forth fully herein.

10 **PRAYER**

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board issue a decision:

- 13 1. Denying the application of William Fernando Matias for a Pharmacy Technician
14 Registration; and
15 2. Taking such other and further action as deemed necessary and proper.

16
17 DATED: 3/19/12


18 VIRGINIA HEROLD
19 Executive Officer
20 Board of Pharmacy
21 Department of Consumer Affairs
22 State of California
23 Complainant
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